

EXHIBIT B

EVIDENCE ACT 1905

“court” in relation to an arbitration or reference, means the arbitrator or umpire and, in relation to proceedings before a tribunal (not being one of the ordinary courts of law), means the tribunal;

“legal proceedings” includes an arbitration or reference, whether under an enactment or not.

(3) Any reference in this Part to any other enactment is a reference thereto as amended, and includes a reference thereto as applied, by or under any other enactment.

(4) Nothing in this Part shall prejudice the operation of any enactment which provides (in whatever words) that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings (however described).

In this subsection the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information making discovery, producing documents or otherwise.

(5) Nothing in this Part shall prejudice—

- (a) any power of a court, in any civil proceedings, to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion; or
- (b) the operation of any agreement (whenever made) between the parties to any civil proceedings as to the evidence which is to be admissible (whether generally or for any particular purpose) in those proceedings.

(6) Where, by reason of any defect of speech or hearing from which he is suffering, a person called as a witness in any civil proceedings gives his evidence in writing or by signs, that evidence is to be treated for the purposes of this Act as being given orally.

PART IIC

THE TAKING OF EVIDENCE REQUIRED FOR PROCEEDINGS IN OTHER JURISDICTIONS

Application to Supreme Court for assistance in obtaining evidence for civil proceedings in other court

27P Where an application is made to the Supreme Court (in this Part referred to as “the Court”) for an order for evidence to be obtained in Bermuda, and the Court is satisfied—

- (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal (hereinafter referred to as the “requesting court”) exercising jurisdiction similar to that of the Supreme Court in a country or territory outside Bermuda; and
- (b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which have been instituted before the requesting court,

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the Court shall on being further satisfied that there is an intention that the proceedings should continue to trial, have the powers conferred on it by the following provisions of this Part.

Power of Court to give effect to application for assistance

27Q (1) Subject to this section, the Court shall have power, on any such application as is mentioned in section 27P, by order to make such provision for obtaining evidence in Bermuda as may appear to the Court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the Court may consider appropriate for that purpose.

(2) Without prejudice to the generality of subsection (1) but subject to this section, an order under this section may in particular, make provision—

- (a) for the examination of witnesses, either orally or in writing;
- (b) for the production of documents;
- (c) for the inspection, photographing, preservation, custody or detention of any property including any land, chattel or other corporeal property of any description;
- (d) for the taking of samples of any such property and the carrying out of any experiments on or with any such property;
- (e) for the medical examination of any person;
- (f) without prejudice to paragraph (e), for the taking and testing of samples of blood from any person.

(3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the Court (whether or not the proceedings are of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give testimony, either orally or in writing, otherwise than on oath where this is asked for by the requesting court.

(4) An order under this section shall not require a person—

- (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in this possession, custody or power; or
- (b) to produce any documents other than particular documents specified in the order as being documents appearing to the Court to be, or to be likely to be, in his possession, custody or power.

(5) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance as a witness in civil proceedings before the Court.

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Privilege of witnesses

27R (1) A person shall not be compelled by virtue of an order under section 27Q to give any evidence which he could not be compelled to give—

- (a) in civil proceedings in Bermuda; or
- (b) subject to subsection (2), in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.

(2) Subsection (1)(b) shall not apply unless the claim of the person in question to be exempt from giving the evidence is either—

- (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or
- (b) conceded by the applicant for the order,

and where such a claim made by any person is not supported or conceded as aforesaid he may, subject to the other provisions of this section, be required to give the evidence to which the claim relates but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

(3) Without prejudice to subsection (1), a person shall not be compelled by virtue of an order under section 27Q to give any evidence if his doing so would be prejudicial to the security or national interests of Bermuda or any country in the Commonwealth; and a certificate signed by or on behalf of the Governor to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(4) In this section references to giving evidence include references to answering any question and to producing any document and the reference in subsection (2) to the transmission of evidence given by a person shall be construed accordingly.

Power of court to assist in obtaining evidence for criminal proceedings in overseas courts

27S (1) The provisions of sections 27P to 27R shall have effect in relation to the obtaining of evidence for the purposes of criminal proceedings as they have effect in relation to the obtaining of evidence for the purposes of civil proceedings except that no order under section 27Q shall make provision otherwise than for the examination of witnesses, either orally or in writing, or for the production of documents.

(2) In its application by virtue of subsection (1) section 27R(1)(a) and (b) shall have effect as if for the words “civil proceedings” there were substituted the criminal proceedings”.

(3) Nothing in this section applies in the case of criminal proceedings of a political character.

Power of court to assist in obtaining evidence for international proceedings

27T (1) The Governor may by order direct that, subject to such exceptions, adaptations or modifications as may be specified in the order, sections 27P to 27R shall have effect in relation to international proceedings of any description specified in the order.

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(2) An order under this section may direct that the provisions of the law relating to perjury shall have effect in relation to international proceedings to which the order applies as if they were proceedings before the Court.

(3) In this section “international proceedings” means proceedings before the International Court of Justice or any other court, tribunal, commission, body or authority, whether consisting of one or more persons, which in pursuance of any international agreements or any resolution of the General Assembly of the United Nations, exercises any jurisdiction or performs any functions of a judicial nature or by way of arbitration, conciliation or inquiry or is appointed (whether permanently or temporarily) for the purpose of exercising any jurisdiction or performing any such functions.

Rules of Court

27U The power to make rules of court under section 62 of the Supreme Court Act 1905 [title 8 item 1] shall include power to make rules of court—

- (a) as to the manner, which shall include the parties to be heard, in which any such application as is mentioned in section 27P is to be made;
- (b) subject to this Act, as to the circumstances in which an order can be made under section 27Q; and
- (c) as to the manner in which any such reference as is mentioned in section 27R(2) is to be made,

and any such rules may include such incidental, supplementary and consequential provisions as may be considered necessary or expedient.

False unsworn statement under this Part

27V (1) For the purposes of section 119 of the Criminal Code [title 8 item 31] (which relates to the offence of perjury) any person who gives evidence by virtue of this Part shall be deemed to be giving evidence in a judicial proceeding.

(2) If any person, in giving any testimony, either orally or in writing, otherwise than on oath, where required to do so by an order under this Part makes a statement—

- (a) which he knows to be false in a material particular; or
- (b) which is false in a material particular and which he does not believe to be true,

he commits an offence.

Punishment on conviction on indictment: imprisonment for 2 years or a fine of \$10,000 or both such imprisonment and fine.

Effect of subpoena

27W For the purposes of this Part a reference in a subpoena to attendance at a trial shall be construed as if it included a reference to attendance before an examiner or commissioner appointed by the Court or a judge thereof in any cause or matter in that Court.

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Transitional

27X [omitted]

This Part not to bind Crown

27Y Nothing in this Part shall be construed as enabling any court to make an order that is binding on the Crown or on any person in his capacity as an officer or servant of the Crown.

Interpretation

27Z In this Part, unless the context otherwise requires—

“civil proceedings”, in relation to the requesting court, means proceedings in any civil or commercial matter;

“requesting court” has the meaning assigned in section 27P;

“request” includes any commission, order or other process issued by or on behalf of the requesting court.

PART III

[this Part of the Act, as printed, incorporates the former Part XXVIII of the Criminal Code sections 32 to 39 inclusive]

EVIDENCE IN CRIMINAL CAUSES

Proof of criminal intent

28 A court or jury, in determining whether an accused person has committed an offence,—

- (a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions; but
- (b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.

Proof by written statement

29 (1) In any criminal proceedings, other than proceedings under the Indictable Offences Act 1929 [title 8 item 32], a written statement by any person shall, if such of the conditions mentioned in subsection (2) as are applicable are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The conditions are as follows—

- (a) the statement purports to be signed by the person who made it;
- (b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement